REMARKS

This Election and Amendment is in response to the Office Action, dated January 9, 2008 ("Office Action"). Claims 1, 3-16 and 18-22 are pending. Claims 18-22 are withdrawn, Claim 2 is cancelled, Claims 1 and 6 are currently amended. Claim 17 was previously cancelled. No new matter is added. Examination of the claims in view of the ensuing remarks is respectfully requested.

Claim 1 has been amended to recite that which had been disclosed in previously presented and now cancelled Claim 2. Claim 6 has been amended to recite specific polypeptides, derivatives or analogues thereof according to the disclosure of Claim 1. This amendment of Claim 6 is in response to the Examiner's sub-restriction of the Group I claims and is made pursuant to the Examiner Interview that took place between the Examiner and the undersigned during the pendency of this Office Action.

In the Office Action, Examiner required election among groups of the claimed invention described in Groups I-V under 35 U.S.C. §§121 and 372. These Groups were noted as follows:

I. Claims 1-16, drawn to sundry $apoE_{141-149}$ tandem repeat polypeptides;
II. Claim 18, drawn to an agent capable of increasing the biological activity of an $apoE_{141-149}$ tandem repeat polypeptide;
III. Claim 19, drawn to a method of preventing/treating viral infection by administering $apoE_{141-149}$ tandem repeat polypeptides;
IV. Claims 20 and 21, drawn to a nucleic acid encoding sundry $apoE_{141-149}$ tandem repeat polypeptides; and
V. Claim 22, drawn to a method of preventing/treating viral infection by administering viral infection by administering a nucleic acid encoding $apoE_{141-149}$ tandem repeat polypeptides.

The Examiner found that Groups I-V do not relate to a single inventive concept because they lack the same or corresponding special technical features. The Examiner found that the claimed invention fails to make a contribution over Laskowitz et al. (U.S. Publication No. US2002/0164789), which the Examiner found to disclose $apoE_{141-149}$ tandem repeat polypeptides and variants thereof.

In addition, the Examiner has noted that should Group I be elected, Applicant must also elect a single polypeptide (e.g., one of SEQ. ID NOS. 3, 4, 5, 6, etc.). The Examiner also noted that this election is a restriction requirement and not a species election.

Applicant hereby elects the embodiment of the instant invention described in Group I, upon which Claims 1 and 3-16 are readable, for prosecution on the merits. Through the current amendment to Claim 6, Applicant has also elected SEQ ID NOS. 3, 4, 5, 55 and 59. This is in response to the Examiner's sub-restriction of the Group I claims and is made pursuant to the Examiner Interview noted above. Applicant reserves the right to pursue the subject matter of Groups II through V in one or more divisional applications.

The foregoing election notwithstanding, Applicant respectfully traverses the restriction requirement and submits that it is improper. Examiner cites PCT Rule 13 as the basis for the restriction requirement. This Rule provides that "the requirement of unity of invention . . . shall be fulfilled only when there is a technical relationship among [the] inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." See PCT Rule 13.2.

Here, each of the "inventions" identified by Examiner includes one or more of the same corresponding special technical features. Specifically, each of the "inventions" identified by the Examiner includes a polypeptide, derivative or analogue thereof

comprising a tandem repeat of apoE141-149 of SEQ ID No 2 or a truncation thereof, in which at least one Leucine (L) residue of SEQ ID No. 2 is replaced by specific amino acids with side chains comprising at least 4 carbon atoms and at least one nitrogen atom (i.e., tryptophan, arginine or lysine). These specific leucine substitutions were found by the inventors to confer unanticipated and previously unreported anti-viral activity on the resultant polypeptides. This single unifying feature applies equally to the Examiner's requirement that Applicant elect between the Group I-V "inventions" as it does to the Examiner's sub-restriction of the Group I claims. It is respectfully submitted that this feature establishes unity of invention among the various Groups and the sub-groups of the Group I claims.

In addition, the Examiner asserted in the Office Action that the present invention fails to make a contribution over U.S. Patent Application Publication No. 2002/164789 to Laskowitz at al. and, thus, that the pending claims lack a special technical feature. While the Laskowitz reference may be said to discuss apoE141-149 tandem repeat polypeptides, it does not disclose, either explicitly or inherently the unifying feature of Applicant's invention, namely that specific leucine substitutions confer previously unreported anti-viral activity upon the resultant polypeptides. Thus, Applicant's invention makes a contribution over the prior art and the Laskowitz reference cannot be said to destroy the unity of the pending claims. Withdrawal of the restriction requirement for the alleged lack of a single inventive concept is thus respectfully requested.

All of the claims in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
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